

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

**Appeal from the Court of Appeals**  
**Murphy, P.J., and Sawyer and Bandstra, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN,**

Plaintiff-Appellee,

-VS-

**EDMUND MCGEHEE BARBEE,**

Defendant-Appellant.

Supreme Court No. 123491

Court of Appeals No. 243912

Lower Court No. 01-008641-FH

---

**ROBERT A. COONEY (P47454)**  
**GRAND TRAVERSE COUNTY PROSECUTOR**  
Attorney for Plaintiff-Appellee

---

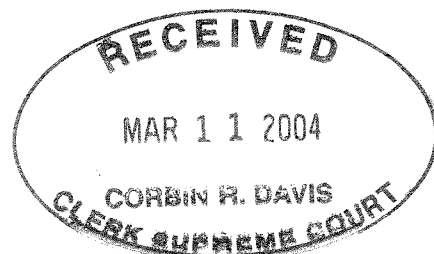
**ANNE M. YANTUS (P39445)**  
**STATE APPELLATE DEFENDER OFFICE**  
Attorney for Defendant-Appellant

---

**DEFENDANT-APPELLANT'S REPLY BRIEF**

**STATE APPELLATE DEFENDER OFFICE**

**BY: ANNE M. YANTUS (P39445)**  
Managing Attorney  
3300 Penobscot Building  
645 Griswold  
Detroit, MI 48226  
(313)256-9833



## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	i
STATEMENT OF QUESTIONS PRESENTED .....	ii
STATEMENT OF FACTS.....	1
I. THE TRIAL COURT ERRED IN SCORING OFFENSE VARIABLE 19 OF THE LEGISLATIVE SENTENCING GUIDELINES WHERE MR. BARBEE DID NOT INTERFERE OR ATTEMPT TO INTERFERE WITH THE “ADMINISTRATION OF JUSTICE” BY PROVIDING A FALSE NAME AT THE TIME OF ARREST, AND TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTIONAL RIGHT TO COUNSEL, BY FAILING TO OBJECT TO THE SCOPE OF THE STATUTORY LANGUAGE AT THE TIME OF SENTENCING.....	2
SUMMARY AND RELIEF.....	6

AMY\*Reply brief.doc\*IDEN No 20436 \* 3-10-04  
BARBEE, EDMUND McGHEE

## **TABLE OF AUTHORITIES**

### **CASES**

<u>People v Barbee</u> (Docket No. 123491), 671 NW2d 886 (2003),.....	2
<u>People v Coleman</u> , 350 Mich 268; 86 NW2d 281 (1957) .....	3
<u>People v Deline</u> , 254 Mich App 595; 658 NW2d 164 (2002) .....	2
<u>People v Jenkins</u> , 244 Mich App 1, 624 NW2d 457 (2000) .....	4
<u>People v Ormsby</u> , 310 Mich 291; 17 NW2d 187 (1945).....	3, 4
<u>People v Philbaun</u> , 461 Mich 255; 602 NW2d 371 (1999) .....	4
<u>People v Thomas</u> , 438 Mich 448 (1991).....	3, 4

### **SECONDARY AUTHORITIES**

<i>Black's Law Dictionary</i> (7 <sup>th</sup> ed 1999), p. 45. ....	3
<i>A Dictionary of Modern Legal Usage</i> (2d ed), p. 611 .....	2

## **STATEMENT OF QUESTIONS PRESENTED**

- I. DID THE TRIAL COURT ERR IN SCORING OFFENSE VARIABLE 19 OF THE LEGISLATIVE SENTENCING GUIDELINES WHERE MR. BARBEE DID NOT INTERFERE OR ATTEMPT TO INTERFERE WITH THE “ADMINISTRATION OF JUSTICE” BY PROVIDING A FALSE NAME AT THE TIME OF ARREST, AND DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTIONAL RIGHT TO COUNSEL, BY FAILING TO OBJECT TO THE SCOPE OF THE STATUTORY LANGUAGE AT THE TIME OF SENTENCING?**

Trial Court answers “No”.

Court of Appeals answers, "No".

Defendant-Appellant answers, "Yes".

## **STATEMENT OF FACTS**

Defendant-Appellant Edmund Barbee incorporates the Statement of Facts set forth in his previously-filed Brief on Appeal.

**I. THE TRIAL COURT ERRED IN SCORING  
OFFENSE VARIABLE 19 OF THE LEGISLATIVE  
SENTENCING GUIDELINES WHERE MR. BARBEE  
DID NOT INTERFERE OR ATTEMPT TO  
INTERFERE WITH THE “ADMINISTRATION OF  
JUSTICE” BY PROVIDING A FALSE NAME AT  
THE TIME OF ARREST, AND TRIAL COUNSEL  
PROVIDED INEFFECTIVE ASSISTANCE OF  
COUNSEL, IN VIOLATION OF THE STATE AND  
FEDERAL CONSTITUTIONAL RIGHT TO  
COUNSEL, BY FAILING TO OBJECT TO THE  
SCOPE OF THE STATUTORY LANGUAGE AT THE  
TIME OF SENTENCING.**

Defendant remains firm in his position that the Court of Appeals correctly found in People v Deline, 254 Mich App 595; 658 NW2d 164 (2002), lv gtd 468 Mich 942 (2003), lv vacated and decision held in abeyance pending People v Barbee (Docket No. 123491), 671 NW2d 886 (2003), that the phrase “interfere with the administration of justice” is tantamount to the crime of obstructing justice and requires interference with judicial or court proceedings.

In response to Plaintiff-Appellee’s Brief on Appeal, Defendant takes issue with the following propositions advanced therein.

Plaintiff expresses surprise that the Court of Appeals in Deline “without explanation, assumes that the phrase [interfere with the administration of justice] is equivalent to ‘obstruction of justice.’” Plaintiff’s Brief on Appeal p. 5. Plaintiff, however, fails to closely review the Deline decision. In Deline, the Court of Appeals referred to Garner, *A Dictionary of Modern Legal Usage* (2d ed), p. 611, for the proposition that “‘Interference with’ justice is equivalent in meaning to ‘obstruction of’ justice.” 254 Mich App at 597. While the Court of Appeals did not provide the definition found in Garner, Plaintiff acknowledges in its own brief that the Garner definition is as follows: “[O]bstruction of justice’ is defined as follows: ‘*obstruction of justice* (= interference with orderly administration of law) is a broad phrase that captures every willful

act of corruption, intimidation or force that tends somehow to impair the machinery of the civil or criminal law.” Plaintiff’s Brief on Appeal op. 5., n 3.

Plaintiff also erroneously asserts that “the word ‘administration’ appears nowhere in the Garner definition. Plaintiff’s Brief on Appeal p. 5. But as indicated above, and according to Plaintiff’s brief, the Garner definition indicates that obstruction of justice is equivalent to “interference with the orderly administration of law.”

Plaintiff also relies on the definition of “administration of justice” found in *Black’s Law Dictionary* (7<sup>th</sup> ed 1999), p. 45. In *Black’s Law Dictionary* the phrase is defined as “The maintenance of right within a political community by means of the physical force of the state; the state’s application of the sanction of force to the rule of right.” But Plaintiff fails to recognize that the application of physical force by the state to the “rule of right” can and should be read as application of the state’s powers against an individual once a *court* determines the “rule of right” in an individual case (i.e., that the law has been violated).

Plaintiff further argues that in People v Thomas, 438 Mich 448 (1991), this Court specifically distinguished between obstruction of justice and the orderly administration of justice, concluding that the latter concept encompasses more conduct than the former. Plaintiff’s Brief on Appeal p. 8. But again, Plaintiff fails to fully credit this Court’s decision in Thomas. In Thomas, this Court acknowledged that obstruction of justice is generally an interference with the administration of justice, and it generally requires activity aimed at the judicial process:

Obstruction of justice is generally understood as an interference with the orderly administration of justice. This Court, in *People v Ormsby*, 310 Mich 291, 300; 17 NW2d 187 (1945), defined obstruction of justice as “impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein.” In *People v Coleman*, 350 Mich 268, 274; 86 NW2d 281 (1957), this Court stated that obstruction of justice is “committed when the effort is made to thwart or impede the

administration of justice.” While these definitions adequately summarize the essential concept of obstruction of justice, we believe they lack the specificity necessary to sustain a criminal conviction. [438 Mich at 455-456; emphasis added.]

Plaintiff also suggests that interfering with a proper or legitimate criminal investigation could constitute the crime of obstruction of justice. Plaintiff’s Brief on Appeal p. 13. Defendant would counter that while interfering with a grand jury investigation may constitute the crime of obstruction of justice, People v Jenkins, 244 Mich App 1, 17-18; 624 NW2d 457 (2000), no Michigan case holds that interference with a non-judicially-sanctioned investigation, occurring prior to the initiation of criminal proceedings, constitutes the crime of obstruction of justice. Although Plaintiff would like this Court to believe that its decision in People v Philbaun, 461 Mich 255; 602 NW2d 371 (1999), supports the proposition that one may obstruct justice before the initiation of judicial proceedings, in Philbaum, however, this Court was dealing with resistance to the execution of a **search warrant** lawfully authorized by a magistrate.

This Court should look closely to the conclusions reached by it more than half a century ago that “to obstruct justice, connotes an interference with the orderly administration of law” and “[t]he phrase “obstructing justice” means impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein.” (citations omitted).” People v Ormsby, 310 Mich 291, 299-300; 17 NW2d 187 (1945). While this Court must define the phrase “interfere with the administration of justice” rather than “obstruct justice,” the two concepts are exceedingly similar and may be equated with each other.

Defendant also reiterates his position that there must be a rule against application of OV 19 to trifling acts that have little or no potential to mislead the arresting officers. The Michigan Legislature surely did not intend to strain an already overburdened prison system by adding



months and sometimes years of incarceration to the sentences of individuals who in only the smallest ways attempt to evade arrest or are less than forthright with the arresting officers.

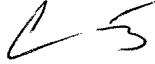
**SUMMARY AND RELIEF**

**WHEREFORE**, for the foregoing reasons, Defendant-Appellant asks that this Honorable Court grant this reply brief and remand this matter for resentencing.

Respectfully submitted,

**STATE APPELLATE DEFENDER OFFICE**

BY: \_\_\_\_\_

  
**ANNE YANTUS P 39445**  
Assistant Defender  
3300 Penobscot Building  
645 Griswold  
Detroit, Michigan 48226  
(313) 256-9833

Dated: March 10, 2004